STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of ROBERT BERDYS, Deceased.

ROBERT M. BERDYS, Personal Representative of the Estate of ROBERT BERDYS, Deceased,

Appellee,

v

ROBERTA DEST,

Appellant.

UNPUBLISHED
October 3, 2000

No. 214462
Macomb Circuit Court
Family Division
LC No. 97-153728-IE

Before: McDonald, P.J., and Sawyer and White, JJ.

PER CURIAM.

Appellant appeals as of right from the family court's order determining heirs. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Decedent Robert Berdys died intestate. Appellee Robert M. Berdys, hereinafter referred to as Bobby, was appointed personal representative of decedent's estate, the value of which exceeded $200,000.

Appellant, decedent's sister, filed a petition for determination of heirs. The petition alleged that Bobby was born out of wedlock, that decedent never executed a written acknowledgment of paternity, and that decedent and Bobby did not maintain a mutually acknowledged parent-child relationship. Appellant requested that DNA testing be performed to determine if Bobby was decedent's biological child. At a hearing, the family court heard contradictory evidence regarding the existence of a mutually acknowledged parent-child relationship between decedent and Bobby. Appellant and her daughter maintained that no such relationship existed. Other witnesses, including Bobby, testified regarding such a relationship. Bobby indicated that he regarded decedent as his father, and that decedent regarded him as his son. Decedent provided him with financial support, and engaged in various activities with him when his work schedule allowed. The court found that a parent-child relationship existed between

decedent and Bobby. Furthermore, the court concluded that because the evidence established the existence of such a relationship, DNA testing was not necessary.

This case presents a question of law, which we review de novo on appeal. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

MCL 700.111(4); MSA 27.5111(4) provides in pertinent part:

> (4) If a child is born out of wedlock or if a child is born or conceived during a marriage but is not the issue of that marriage, a man is considered to be the natural father of that child for all purposes of intestate succession if any of the following occurs:
>
> * * *
>
> (c) The man and the child have borne a mutually acknowledged relationship of parent and child that began before the child became age 18 and continued until terminated by the death of either.

Appellant argues that the family court erred by denying her request that DNA testing be performed to determine if Bobby is the natural child of decedent. We disagree and affirm the family court's order denying DNA testing and determining heirs. The family court found that decedent and Bobby had maintained a mutually acknowledged parent-child relationship which began before Bobby reached the age of eighteen, and continued until decedent's death. Appellant's position is that as decedent's next possible heir, she is entitled to compel Bobby to submit to DNA testing to prove his right to inherit from decedent, notwithstanding the strength of the evidence he submitted to establish that right under MCL 700.111(4)(c); MSA 27.5111(4)(c). Appellant's position is without merit. DNA testing has been allowed to establish paternity, and the resulting right to inherit, when that right could not be established by any means included in MCL 700.111(4); MSA 27.5111(4). See *In re Jones Estate*, 207 Mich App 544, 553; 525 NW2d 493 (1994). No statutory language requires that the right to inherit as established by any means listed therein must be "confirmed" by DNA testing. Bobby was not required to produce such evidence; his failure to do so cannot lead to an adverse inference. The family court correctly denied appellant's request.

Affirmed.

/s/ Gary R. McDonald
/s/ David H. Sawyer
/s/ Helene N. White